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ALEXANDER L. STEVAS,
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No. 84-1617

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

ALABAMA PUBLIC SERVICE COMMISSION,

Petitioner

V.

UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION,
and GREYHOUND LINES, INC.,

Respondents

REPLY BRIEF

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Interstate Commerce Commission can refuse to allocate expenses between interstate and intrastate bus service in intrastate rate cases under the Bus Regulatory Reform Act.

2. Whether the Interstate Commerce Commission can prescribe an intrastate bus rate increase without evidence supporting the amount of the increase.

3. Whether the Bus Regulatory Reform Act preempts state laws requiring the filing of intrastate rate reductions.

PARTIES

The caption of this petition contains the names of all parties to this action in the Eleventh Circuit. The Alabama Public Service Commission is an agency of the State of Alabama.

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OPINIONS BELOW

Neither the decision of the Interstate Commerce Commission nor the opinion of the Eleventh Circuit is reported in any official or known unofficial report.

It should be noted that another decision has been entered under the Bus Regulatory Reform Act, and a Petition for Certiorari is pending. Commissioner of Transportation v. United States, 750 F.2d 163 (2nd Cir., 1984); Petition for Certiorari pending, No. 84-1135.

JURISDICTION

The Judgment of the Eleventh Circuit was entered on February 22, 1985. No petition for rehearing was filed. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

The statute involved is Section 17 of the Bus Regulatory Reform Act of 1982, codified at 49 U.S.C. 11501(e) (1984 Supp.). This provision is printed in the Petition, beginning at page 3.

ARGUMENT

Amount of the Rate Increase

This reply brief is directed solely to the argument that the Interstate Commerce Commission can select any figure for the intrastate rate it sets. Brief for the Federal Respondents in Opposition, pages 11 and 12. This assertion is clearly contrary to 49 U.S.C. 11501(e)(1) and shows that this case should be heard.

49 U.S.C. 11501(e)(1) gives the ICC the power to prescribe any provision in a carrier's intrastate tariff, including rules, practices, one-way fares, round-trip fares, etc. The word "any" cannot be taken out of context to authorize any decision or award. Manifestly, the words

selected by Congress and the congressional intent are severely mangled if, as the Federal Respondents assert, the ICC can simply approve whatever the carrier seeks or arbitrarily select any other figures for a rate prescription.

CONCLUSION

The Interstate Commerce Commission has misconstrued and misapplied 49 U.S.C. 11501(e)(1). For this reason and the other reasons stated in the petition, the petition should be granted and this case should be heard.

Respectfully submitted,

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